Supreme Court, U.S.
FILED
06-257 AUG 18 2006
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

Marilyn I. Ellman
Petitioner,

Vs.

Claire Ellman Pryor
Margaret Wilmot
Law offices of
Booth - Patterson,
(aka) Law offices of
Booth, Patterson, Lee,
Need & Adkison,
(aka) Law Offices of Booth,
Patterson, Karlstrom & Steckling
J. Timothy Patterson, Estate of
Martin L. Kimmel (deceased)
Michael J. Hughes
Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit
Cincinnati, Ohio

PETITION FOR A WRIT OF CERTIORARI

Marilyn I. Ellman, Pro Se
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Lake Geneva, Wisconsin 53147
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QUESTIONS PRESENTED

1. Whether the failure of the District Court to allow discovery against Defendants who were attorneys, amounted to a denial of Due Process, Equal Justice, or Equal Access to the courts?

2. Whether the Federal Courts have an obligation to parties in litigation to be fair and impartial during the litigation, and to conduct a search for the truth?

3. Whether the Federal Court by its failure to insure or remit justice between the parties, by refusing to allow discovery and protecting attorneys who had participated in a fraud, caused Ellman to be subject to unreasonably cruel and unusual punishment in the loss of a substantial inheritance?

4. Whether the District Court, erred as a matter of Law by failing to allow discovery against attorneys who were shown to have been involved in and in orchestrating a Fraud against this petitioner?

5. Whether documents which were ordered to be provided to Plaintiff from the defendant attorneys' files within 14 days **after** the decision of the judge on summary judgment – which was too late to be used by Plaintiff, amounts to a denial of Procedural Due Process?

6. Whether the District court abused its discretion after a showing of the existence of a conspiracy and a Fraud being carried out between defendant Pryor and her counsel, by failing to allow discovery?

7. Whether there was a failure on behalf of the District court to provide equal justice and equal access to the Courts by their acts of protectionism of attorney defendants.

8. Whether there is equal justice under the law for a Pro Se litigant when Defendants who are attorneys make untruthful statements at a Federal District Court Hearing and in Depositions for the purpose of concealing the existence of known documents, which statements are shown to be false and yet the attorney defendants are allowed to escape punishment, and protected from providing the evidence of their Fraud and conspiratorial involvement?

9. Whether it was a reversible error for the District Court to not allow the case to go forward to trial when there were conflicting affidavits and proof that the attorney defendants had hid and were continuing to hide information that proved wrong doing and fraud by them in aid of their client?

10. Whether it was a reversible error to not allow an impartial psychological evaluation and deposition of petitioner's mother, now age 100, after an evaluation that failed to meet the standards required to be applied to seniors, to determine her cognitive reasoning ability and susceptibility to influence by the defendants?

11. Whether it was a reversible error of the District Court Judge not to recuse himself from the case, due to his past familiarity with the defendant attorneys, both by past practice location in Oakland County Michigan and their mutual political party activities that provided familiarity and friendship with each other?

12. Whether pro Se Litigants should receive consideration by the court in presenting their case, and whether when it is shown that the Pro Se litigant has a valid cause of action, she should be held to a lesser standard than that of attorneys in order to present her case to a fact finder as the Supreme Court mandates, as laid down, in Haines v. Kerner, 404 U.S. 519 (1972), and Swierkiwicz v. Sorena, 534 U.S. 506 (2002)?

13. Whether the District Court abused its discretion or committed error as a matter of law, by granting a prior restraint against a first time litigant, when it limited Appellant's first amendment rights in the Opinion and Order by restraining Appellant from filing any further lawsuits in its jurisdiction, without first obtaining prior written permission from a judge of the court?

14. Whether the District Court erred in not addressing the charges of Perjury against the attorney defendants?

LIST OF PARTIES TO PROCEEDING

Petitioner consists of Marilyn I. Ellman, resident of Wisconsin, Pro Se, a Psychologist who works in Woodstock, Illinois.

Respondents consist of:

- Claire Ellman Pryor, retired, sister of Petitioner
- Margaret Wilmot, retired, cousin of Petitioner
- Law Office of Booth-Patterson,

  (aka) Law Office of Booth, Patterson, Lee, Need & Adkerson,

  (aka) Law Offices of Booth, Patterson, Lee, Karlstrom & Steckling
- J. Timothy Patterson
- Estate of Martin L. Kimmel (deceased)
- Michael J. Hughes

Respondent attorneys served as legal counsel for defendants Pryor, Wilmot and others involved in the lawsuit

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....ii

LIST OF PARTIES.....vi

TABLE OF CONTENTS.....vii

INDEX TO THE APPENDIX.....ix

TABLE OF AUTHORITIES:

CASES RELIED ON IN THE APPEAL TO THE SIXTH CIRCUIT.....xi

CASES RELIED ON IN THIS APPICATION FOR WRIT.....xii

STATUTES & RULES.....xiii

U.S. CONSTITUTION (SELECTED

PROVISIONS).....xiii

OPINON BELOW.....1

JURISDICTION.....4

CONSTITUTIONAL AND STATUTORY

PROVISIONS AND RULES INVOLVED.....7

STATEMENT OF THE CASE.....9

REASONS FOR GRANTING THE WRIT.....23

CONCLUSION.....26

INDEX TO THE APPENDIX

Date

APPENDIX A: Order; Opinion and Order from U.S. Court of Appeals for the Sixth Circuit for No.05-1845, that the District Court' judgment is affirmed, ...4-25-2006

APPENDIX B: Order from the U.S. Court of Appeals for the Sixth Circuit for No. 05-1845, denying motion for rehearing en banc,..... 7-28-2006

APPENDIX C: Mandate from U.S. Court of Appeals for the Sixth Circuit for No.05-1845,that costs are "None".....8-07-2006

APPENDIX D: Opinion and Order granting defendants' Motions for Summary Judgment for No. 04-72351 by the United States District Court Eastern District Michigan Southern Division 6-01-2005

APPENDEX E: Order Affirming Magistrate Judge Virginia Morgan's Order dated May11, 2005, denying Plaintiff's Motion for Sanctions, for Referral to the department of Justice, and for an Order Compelling Irene Ellman to Submit to a

Psychological Examination by the United States District Court Eastern District Michigan Southern Division for No. 04-72351 5-31-2005

APPENDIX F: The Opinion & Order Rejecting Defendants' Motions for Attorney Fees, Costs, and Sanctions [including refraining plaintiff from further filing in the Michigan federal district court] by the United States District Court Eastern District of Michigan Southern Division for No. 04-72351, ...8-03- 05

APPENDIX G: DISCOVERY ORDER [Sanctions] of open Court Meeting (3-2005) of the United States District Court Eastern District of Michigan, Southern Division for No. 04-72351.....3-07-05

TABLE OF AUTHORITIES

CASES RELIED ON IN THE APPEAL TO THE SIXTH CIRCUIT

Pages

Bonelli v. Volkswagen of Am., Inc., 421 N.W.2d 213, 219-20 (Mich. Ct. App. 1988).....21

Foremost Ins. Co. v Allstate Ins. Co., 486 N.W. 2nd 600, 606 (Mich. 1992). 22

Head v Phillips Camper Sales & Rental, 593.....22

H.J. Tucker & Assocs. Inc. v. Allied Chucker & Eng'g Co., 595 N.W.2d 176, 187 (Mich. Ct.App. 1999) 21

Hi-Way Motor Co. v. Int'l Harvester Co, 247 N.X.2d 813 (Mich. 1976).....21

CASES RELIED ON IN THIS APPLICATION FOR WRIT

Page

Bryson v. City of Waycross, 888 F.2d 1562 (11th Cir. 1989) 13

Connick v. Myers, 461 U.S. 138, 146-47 (1983),...13

Haines v. Kerner 404 U.S. 519 (1972).....v

Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46-47.....13

Ronald W. Rosenberger, et al. v. Rector and Visitors of the University of Virginia, 515 U.S. 819. 6-29-1995, 7-16,.....13

Jerome D. Salinger a/k/a J.D. Salinger, v. R dom House, and Ian Hamilton, U.S. Court of Appeals for the Second Circuit 811 F.2d 90, 1-29-1987.....13

Sheppard v. Maxell, Warder, 384 U.S. 333,

6-6-1966.....13

Swierkiewicz v. Sorema,534 U.S. 506 (202), 513-515, 2nd Circuit.....v

Taucher v. Born,--F. Supp.2d--, No. Civ A 97-1711 RMU, 1999 WL431065 (D.D.C. June 21 1999)...13

STATUTES & RULES

Page

28 U.S.C. 1254(1):.....5

28 U.S.C. 1291 and/or U.S.C. 2107.....4

29 U.S. C. 1391.....4

SCR 29 6

U. S. Constitution (Selected Provisions)

U.S Constitution, Amendment I.....7,11,12

U.S. Constitution, Amendment V.....7

U.S. Constitution, Amendment VII.....8

U.S. Constitution, Amendment VIII.....8

U.S. Constitution, Amendment XIV.....8

OPINONS BELOW

Petitioner seeks review of the Opinions/Orders below filed by the United States Court of Appeals for the Sixth Circuit and the decisions from the United States District court for the Eastern District of Michigan, Southern Division.

(1) The Order of the U.S. Court of Appeals for No. 05-1845 of the Sixth Circuit, upholding the district court, on 4-25-2006.

The Order for the United States Court of Appeals appears at Appendix **A** to the petition and is unpublished.

(2) The Order of the U.S. Court of appeals for No. 05-1845, denying Appellant's petition for rehearing en banc, on July 28, 2006

The Order for the United States Court of Appeals appears at Appendix **B** to the petition and is unpublished.

(3) OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT (Docket #37 and #40), DENYING PLAINTIFF'S PARTIAL SUMMARY JUDGMENT (Docket #77), DENYING PLAINTIFF'S MOTIONS FOR EXTENSION OF TIME (Docket #24 and #38), and DENYING DEFENDANTS' MOTION TO COMPEL (Docket #30) by the United States District Court Eastern District of Michigan, Southern Division for No. 04-72851.

The Order for the United States District Court appears at Appendix **D** to the petition and is unpublished.

(4) The Order Affirming Magistrate Judge Virginia Morgan's Order dated May11, 2005, denying Plaintiff's Motion for Sanctions, for Referral to the department of Justice, and for an Order Compelling Irene Ellman to Submit to a Psychological Examination, by the United States District Court

Eastern District Michigan Southern Division for No. 04-72351

The Order for the United States District Court appears at Appendix **E** to the petition and is unpublished.

(5) The Opinion & Order Rejecting Defendants" Motions for Attorney Fees, Costs, and Sanctions [including refraining plaintiff from further filing in the Michigan federal district court] by the United States District Court Eastern District of Michigan Southern Division for No. 04-72351

The Opinion & Order for the United States District Court appears at Appendix **F** to the petition and is unpublished.

(6) The Discovery Order [Sanctions Requested by Plaintiff] by the United States District Court Eastern District of Michigan Southern Division for No. 04-72351

The Discovery Order for the United States District Court appears at Appendix **G** to the petition and is unpublished.

This Petition follows:

JURISDICTION

A – District Court

Jurisdiction of the United States District Court, Eastern District of Michigan Southern Division was based on diversity of citizenship. Plaintiff is a resident of the State of Wisconsin and defendants are residents of the State of Michigan. The amount in controversy exceeds $75,000. Venue is proper as the complained of actions and property involved occurred in the district and division, see 29 U.S. C. 1391.

B—Appellate Jurisdiction

The jurisdiction of the appellate court was claimed under 28 U.S.C. 1291 and/or U.S.C. 2107.

The dates of the lower court decisions, The United States Court of Appeals for the Sixth Circuit, are:

1. The Order of the U.S. Court of Appeals for the Sixth Circuit was entered on April 25, 2006 upholding the district court.

2. The Order of the U.S. Court of Appeals for the Sixth Circuit denying petition for rehearing en banc was entered on July 28, 2006.

3. The Opinion and Order of the United States District Court Eastern District of Michigan Southern Division granting Summary Judgment for the defendant, denying Plaintiff's Motion for Partial Summary Judgment, denying Plaintiff's Motions for Extension of Time To File Response; denying defendants' Motion to Compel, was entered, 6-01-2005.

C—Jurisdiction of Supreme Court

The Supreme Court enjoys jurisdiction to review final judgments of the United States Courts by virtue of 28 U.S.C. 1254(1):

28 U.S.C. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or degree;

(2) By certification at any time by a court of appeals of any questing of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The petition for Certiorari should be filed within 90 days of the appellate court's date of the denial of the timely petition of rehearing en banc opinion of July 28, 2006. The 90 days should commence to run from July 29, 2006. The petition is therefore due on or before October 26, 2006, and is timely filed by that date.

Service has been made on the respondents, as required by Supreme Court Rule 29.

CONSTITUTIONAL AND STATUTORY

PROVISIONS AND RULES INVOLVED

THE UNDERLINING RULE OF THE UNITED STATES IS EQUAL ACCESS TO THE COURTS OF JUSTICE AND EQUAL, AND IMPARTIAL JUSTICE UNDER THE LAW

U. S. CONSTITUTION

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V [RIGHTS OF PERSONS]

No person shall be held...; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

INTRODUCTION:

Petitioner Ellman brought an action in the District Court, Eastern District of Michigan, case No. 04-72851, setting forth a complaint based on Fraud and Conspiracy to commit Fraud, and a Breach of Fiduciary Duty, and conspiracy in aid of a Breach of Fiduciary Duty, by and among several attorneys and Petitioner's sister Claire Pryor, and cousin, Margaret Wilmot; for the purpose of implementing a policy and procedure whereby Pryor could steal petitioner's inheritance.

Ellman presented evidence that Counsel for her sister, Claire Pryor and cousin, Margaret Wilmot, had been involved with the defendants and helped to develop and implement a strategy by which elderly relatives were tricked into turning their estates over to the defendant Pryor. There was a trust involved and Petitioner Ellman was a disclosed Beneficiary, her sister Defendant Pryor was the Trustee, and her mother, an incompetent, was the Trustor.

her sister Defendant Pryor was the Trustee, and her mother, an incompetent, was the Trustor.

Although Ellman presented evidence of the conspiracy, and although defendants' counsel and the defendant attorneys Lied in court and were caught in those lies by the Magistrate, neither the court nor the Magistrate would reprimand or sanction counsel, but instead the magistrate and the court PROTECTED the defendants by refusing to allow Petitioner the right to conduct discovery of relevant documents in their possession, which documents are and were known to exist.

The Court further in light of the extensive evidence of the Fraud, and the concealment of relevant facts, and documents, granted summary Judgment against Petitioner and in favor of the Defendants.

There is a relationship between the district court judge and some of the attorneys. However the judge when requested to do so refused to recuse himself. The court did such a poor review of Plaintiff's brief that she was even called a "pauper" which was and is false.

The District Court and the Reviewing Court went out of their way to protect the attorneys, to the extent that they misstated, misapplied and misquoted the summary of the complaint and the application of law; for example the Law is that the Trustee has a Duty owed to the Beneficiary as well as the Trustor- however the court in "protecting" the attorneys by an illusionary and improper reading of the complaint somehow interpreted that Petitioner was bringing the complaint on behalf of her mother and not herself; a great and unreasonable inaccurate enlargement of the language and intent of the complaint as is expressed in common English language and reading.

The issues presented cover several important Civil Rights.

The issue of Ellman's Right of Speak and to petition the Courts:

Under the U.S. Constitution, Amendment I, Appellant Ellman is entitled to enjoy a fundamental right to freedom of speech, her speech right is not limited to a vocal undertaking but includes, subject only to reasonable and necessary interference, the basic notion of the right to petition in a written form.

The law as it pertains to Prior Restraints is so well settled that no citation is necessary. The courts are only justified in certain circumstances to grant prior restraint against this important right, suffice it to say the grounds are here lacking. In addition Ellman believes this fundamental and most important Civil right, was denied her by the actions of the courts below in protecting attorneys whom evidence had established were involved in a Fraud and had attempted to conceal that involvement.

The District and Appeal Court both misinterpreted a clearly written brief through a purposeful misstating and stretch of an imagination - that plaintiff Ellman was representing her mother, the senior Ellman and not herself. Previous to the Michigan District Court and the Appeal Court reading, the Wisconsin District Court where the case was originally filed but removed at the defendants request, had no difficulty in interpreting an identical brief correctly. Under Article I of the constitution Appellant has the right to have her brief read and understood, with the same level of intelligence and cognitive ability and training by judges in both Michigan and in Wisconsin. The Court in Michigan abused Ellman's right to petition.

Her speech should not be discriminately denied - Ronald W. Rosenberger, et al. v. Rector and Visitors of the University of Virginia, 515 U.S. 819. 6-29-1995, 7-16, and Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46-47. Freedom of speech should not be used to divert justice under Sheppard v. Maxell, Warder, 384 U.S. 333, 6-6-1966. There should not be unfair use of freedom of speech under Jerome D. Salinger a/k/a J.D. Salinger, v. Random House, and Ian Hamilton, U.S. Court of Appeals for the Second Circuit 811 F.2d 90, 1-29-1987. . The thrust of this petition is the right of an applicant, as a citizen, to the federal court to enjoy a fair and impartial adjudication, in addition not to have a prior restraint. These are issues of public concern and addressed under Bryson v. City of Waycross, 888 F.2d 1562 (11th Cir. 1989) and Connick v. Myers, 461 U.S. 138, 146-47 (1983), and Taucher v. Born,--F. Supp.2d--, No. Civ A 97-1711 RMU, 1999 WL431065 (D.D.C. June 21 1999).

This case presents an issue of unequal justice when attorneys are the defendants and the plaintiff is acting Pro Se, as the courts bent over backwards to protect them. In the present case the

attorneys told untruths repeatedly in open court to "cover up" their involvement in the scheme to defraud Plaintiff. Still the court ignored this and while admitting their deception was sanctionable, still it refused to act on Plaintiff's motion for sanctions.

The attorneys' deception was intended to cover up their fraudulent activity not only in this case but in a related probate court case, also in Michigan. There was also documentation which established probate court deception through the Law Firms' involvement. These documents were provided to the district court but not acted upon, thus allowing the attorneys to get away with FRAUD. Untrue documents and representations were made by them in both courts. The defendants misrepresented specific material facts. In the Michigan Probate Court, before Judge Young, Martin L. Kimmel, attorney for the Booth-Patterson Law Firm, representing both elderly Emma Spears, and defendant Claire Pryor, allowed an false guardian ad litem report dated October 14, 1993 to be admitted to the court, which resulted in Irene Ellman (sister of Emma Spears and also elderly) to become the conservator for Emma Spears' estate. Attorney Kimmel knew that the ad litem report was false, that

Irene Ellman's husband was dead, not alive; that Irene Ellman was not handling Emma spears financial accounts as defendant Claire Pryor was doing that for both Emma Spears and Irene Ellman under a durable power of attorney for both. This wrongdoing by defendant attorney Kimmel resulted in allowing defendant Pryor and Wilmot to manipulate the August 18, 1993 Trust Emma Spears had created for herself and following her death for the five heirs (cousins and expanded to six heirs). As a result of the defendant attorneys, Pryor and Wilmot's' manipulation, Emma Spears died poor in a public nursing home. Emma Spears Farm and estate was manipulated by defendant Pryor to be put into Irene Ellman's new 2001 Will and Trust (only learned about as a result of the federal court meeting in March, 2005) with Claire Pryor in complete control as defendant Pryor manipulates and influences 100 year old Irene Ellman.

The District Court ordered that Plaintiff's case was past the three year Michigan statue of limitation, even though the acts had been concealed and Plaintiff had only recently learned of them. This "concealment" extends the statute.

The district Court favored and protected the attorney defendants by not only accepting their lies in courts (both Federal and Probate) without consequences, but by ignoring conflicting affidavits, and not allowing an impartial psychological evaluation and deposition of the senior mother Ellman, to determine impartially her cognitive abilities and the influence that defendants have over her. Irene Ellman's cognitive ability is the "key" to the correct determination of the case. Only the defendant attorneys' expert was allowed into evidence in spite of conflicting affidavits. Plaintiff Marilyn Ellman is herself a licensed psychologist who has specialized in the area of cognitive and psychological evaluations for over twenty years and knows that her mother is not only influenced by defendants but is functioning at approximate a six year old level in addition to being physically disabled due to blindness in one eye and difficulty with her heart, intestinal difficulty, and mobility difficulties.

DISTRICT COURT CASE:

The case is centered around a breach of an obligation of Defendant Pryor in regards to her "Fiduciary Duty"

Owed to Plaintiff, a Beneficiary Under a Trust, and other related claims. This fiduciary duty was properly alleged to be owed to Plaintiff Ellman and as heir to her mother Irene Ellman's and Aunt Emma Spears' Estates. Senior Irene Ellman's affidavit of September 2, 2003, clearly states that the five heirs to Aunt Emma's Spears farm were her five (5) nieces and nephews under a August 18, 1993 Trust agreement put into place for her by the Booth, Patterson, Lee Law Firm. Later in March 22, 1996, she states in the affidavit that an additional heir was added (Ralph Adams Junior). Claire Pryor, Appellee was to administer the Trust. Wilmot and the defendant attorneys were involved in the fraud, deceit and concealment of this Trust instrument. The Attorney defendants/appellees' denied the existence of the trust in open federal court in March of 2005. A page of the trust on the Booth, Patterson Law firm stationary was mistakenly mailed to Appellant/Plaintiff Ellman, stuck to other discovery material which proved its existence and the lying in federal court by the attorney defendants.

Even through the acts of these defendants were concealed for years and when dealing with an

inheritance the statute is often enlarged, the fraud and trickery of the defendants was eventually discovered and appellant brought the lawsuit within three years of the discovery. There has been ongoing discovery of fraud and trickery of the defendants up to recent revealments and discovery on and about March 2005.

THE APPEAL TO THE SIXTH CIRCUIT

Appellant Ellman made an appeal to the Sixth Circuit.

It does not even appear that her briefs were read as the results appear to be just "copy and paste" statements from the Michigan district court. Any reasonable high school graduate would have had better reading comprehension of the facts presented. Having attorneys as Appellees is obviously a decisive factor.

Appellant Ellman alleged and proved at the trial court level, by clear and convincing evidence that the defendants concealed from Petitioner the various acts of Pryor in transferring assets first from her aunt and

then from her mother, through a series of out of state fraudulent conveyances of the relatives assets, by which Petitioner was fraudulently divested of her interest in the two estates. Pryor concealed the Power of Attorney Pryor received over her aunt, which was obtained through misrepresentations to the Aunt, calculated to steal the estate. These concealments and these misrepresentations worked a direct Fraud, for which Petitioner was directly injured in the loss of her inheritance.

Plaintiff Ellman also established that defendant Pryor made material representations; as to Plaintiff Ellman's equal rights, as heir to the estates. The promissory notes that Ellman provided in discovery regarding a loan which used her inheritance as collateral was evidence of Petitioners interest in the trust.

Defendant Pryor and Wilmot stated that they (with the help of defendant attorneys) were properly caring for mother Irene Ellman, and their aunts. This representation was false as evidenced by Aunt Emma dying poor in a public nursing home.

Pryor, Wilmot, and the defendant attorneys, provided false documents and **lied** in Probate Court, obtaining control over their aunt through the ruse that mother Irene Ellman was managing the estate assets, a ploy known to be false, by all since Pryor was controlling their mothers' estate at the time – but which effectively gave control over Emma Spears' estate to Pryor. The court should note that Pryor initially attempted to gain control over the estate and her request was denied by the Probate Judge, which can now be clearly seen as intentional misrepresentation to the court and facts concealed from Petitioner.

This wrong doing allowed Pryor to obtain control over mother Irene Ellman, and their Aunt Emma Spears' property. (Note: Emma Spears, a once wealthy woman died poor in a public nursing home, even though her estate was worth over two million dollars.) The defendants in their further attempt to conceal the activity from Petitioner knowingly lied in both probate and federal courts. This deception has been ongoing and most recently revealed in the hearing of March 2005 in the federal district court. As a result of the concealment of their fraud, and deception, petitioner has been manipulated out of her

inheritance to both estates; which has caused her to suffer great damage and great emotional suffering, See H.J. Tucker & Assocs.Inc. v. Allied Chucker & Eng'g Co., 595 N.W.2d 176, 187 (Mich. Ct.App. 1999) (citing Hi-Way Motor Co. v. Int'l Harvester Co, 247 N.X.2d 813 (Mich. 1976)). The Appeals Court dismisses the evidence by misinterpreting the brief (just as the Michigan District Court did, although the Wisconsin District Court had no difficulty) although clearly written to be on her own behalf and not her mother, senior Ellman, who is 100 years of age.

The District and Appeal Court both refused to read the material presented that clearly showed a "business relationship" as documented by the loan agreement etc. See Bonelli v. Volkswagen of Am., Inc., 421 N.W.2d 213, 219-20 (Mich. Ct. App. 1988). Plaintiff Ellman received a loan following her divorce of $20,000, which if not paid by a certain date, would be deducted from her inheritance from her mother's estate. The legal promissory notes and letters were submitted in discovery but ignored by the court.

Mother Irene Ellman's affidavit of 9-2-2003 and the defendant attorneys own documents, (the existence of which they lied about in open federal court) clearly reveals Appellee's frauduant acts and clearly satisfy the requirements of Head v Phillips Camper Sales & Rental, 593 N.W.2nd 595, 603 (Mich. Ct. App. 1999) (quoting Foremost Ins. Co. v Allstate Ins. Co., 486 N.W. 2nd 600, 606 (Mich. 1992).

Ellman is an heir to both senior Ellman and Aunt Emma Spears. As stated previously the deceit and fraud has been ongoing with the latest act occurring on and about March 2005, and further carried out through acts intending to conceal the deception, which extends the time-bar. On July 29, 2006, Leonard L. Cavise a professor of law wrote in the Chicago Sun Times, The statute of limitations is a very flexible doctrine." "It can be stopped by a doctrine known as equitable estoppel." "This theory of law says that if the defendant does something to prevent prosecution, then it's the right thing to do (it's a "consideration of equity") to stop the statute from running and extend it until the misconduct of the defendant (e.g., fraudulently concealing his wrongdoing) stops."

Certainly even seasoned judges and attorneys, but more importantly average reasonable feeling individuals would find forcing elderly and feeble women to die in poverty and a public nursing home (because their property was stolen by these defendants) exceeding the bounds of all human decency in any community.

REASONS FOR GRANTING THE WRIT

Two of the main freedoms citizens have enjoyed in the United States have been Freedom of Speech and Equal Justice.

This is what Petitioner Ellman is seeking and has been denied. She is seeking this for herself and the public good. Ellman asks for:

1. the Court to reverse or vacate the judgment of the lower courts.

2. a trial to determine the conflicting affidavits and the case remanded to a different impartial District Court with the discovery promised.

3. an impartial valid psychological cognitive and emotional evaluation of mother Irene Ellman (age 100 years).

4. the refrain/restriction of access to the Michigan District Court rescinded.

For once these rights of Equal Justice and Freedom of Speech are diminished, is the end of our democracy far away?

Appellant Ellman is hopeful that this democracy is not in its final days. Alexander Tyler, a Scottish history profession at the University of Edinburgh said in 1787 that:

> "A Democracy is always temporary in nature; it simply cannot exist as a permanent form of government. A democracy will continue to exist up until the time that voters discover that they can vote themselves generous gifts from the public treasury. From that moment on, the majority always votes for the candidates who promise the most benefits from the public treasury, with the result that every democracy will finally collapse, due to loose fiscal and judicial policy, which is always followed by a dictatorship."

Gentlemen and Ladies of the court the handwriting is on the wall.

If the Courts are to be the ultimate arbitrator, and seeker of the truth, their solitary purpose and reason for existence is to give and do justice between the opposing parties. Are judges and attorneys enjoying such generous revenue that justice and democracy is no longer "That Important"?

For the general good of the country and especially the majority of citizens of the United States who are not paupers, but of modest means and cannot afford an attorney, and need to act in a legal capacity Pro Se, the Supreme Court must protect their access to justice. This will form a more Perfect Union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. These are mandates of our heritage and Constitution. Please help preserve this legacy by accepting this petition and by granting the relief sought.

CONCLUSION

The court should therefore grant this Writ of Certiorari in order to address these concerns and to resolve these important issues of law involving the Constitution and Equal Justice Under the law even when defendants are attorneys and the petitioner is a Pro Se Litigant. The thrust of this petition is the right of an applicant, as a citizen without legal representation, Pro Se, to access the federal courts and to enjoy a fair and impartial adjudication.

Respectfully submitted,

Marilyn I. Ellman, Pro Se Petitioner

Dated: 8-18-2006

APPENDIX

Supreme Court, U.S.
FILED

06-257 AUG 18 2006

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

Marilyn I. Ellman

Petitioner,

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Claire Ellman Pryor
Margaret Wilmot
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For The Sixth Circuit
Cincinnati, Ohio

APPENDIX FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS FOR APPENDIX

Pages

APPENDIX A: Order; Opinion and Order from U.S. Court of Appeals for the Sixth Circuit for No.05-1845, that the District Court' judgment is affirmed, 4-25-06 1-8

APPENDIX B: Order from the U.S. Court of Appeals for the Sixth Circuit for No. 05-1845, denying motion for rehearing en banc, 7-28-2006.....9-10

APPENDIX C: Mandate from the U.S. Court of Appeals for the Sixth Circuit for No. 05-1845, pursuant to the court's disposition that was filed 4-25-2006, 8-72006:.....11

APPENDIX D: Opinion and Order granting defendants' Motions for Summary Judgment for No. 04-72351 by the United States District Court Eastern District Michigan Southern Division, 6-01-2005.....12-27

Pages

APPENDEX E: Order Affirming Magistrate Judge Virginia Morgan's Order dated May11, 2005, denying Plaintiff's Motion for Sanctions, for Referral to the department of Justice, and for an Order Compelling Irene Ellman to Submit to a Psychological Examination by the United States District Court Eastern District Michigan Southern Division for No. 04-72351, 5-31-2005.....28-29

APPENDIX F: The Opinion & Order Rejecting Defendants' Motions for Attorney Fees, Costs, and Sanctions [including refraining plaintiff from further filing in the Michigan federal district court] by the United States District Court Eastern District of Michigan Southern Division for No. 04-72351, 8-03- 05.....30-32

APPENDIX G: DISCOVERY ORDER [Sanctions Requested by Plaintiff] by the United States District Court Eastern District of Michigan Southern Division for No. 04-72351, 3-07-2005..... 33-34

Appendix A

United States Court of Appeals;
For the Sixth Circuit
Cincinnati, Ohio

ORDER WITHOUT ORAL ARGUMENT

Date: April 25, 2006

BEFORE: RYAN and COOK, Circuit Judges,
Honorable James S. Gwin, District Judge

No. 05-1845

Marilyn I. Ellman, Plaintiff-Appellant,

v.

Claire Ellman Pryor et al., Defendant-Appellees.

On Appeal from the United States District Court for the Eastern District of Michigan, No. 04-72851, Barnard A. Friedman, Judge.

Appendix A; Continuing

No. 05-1845

Marilyn I. Ellman, a Wisconsin resident proceeding pro se, appeals the summary judgment for the defendants in this civil action brought under diversity jurisdiction. *See* 28 U.S.C. #1332. This case has been referred to a panel of the court pursuant to Rule 34(j) (1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App.P.34 (a).

Ellman filed a 68-page complaint claiming that her sister, defendant Claire Ellman Pryor, and her cousin, defendant Margaret Wilmot, conspired with defendant law firm Booth-Patterson and its attorneys, to defraud her mother Irene (who turned 99-years-old in 2004) and her mother's sister, Emma Spears, of their property and of Ellman's inheritance. Ellman asserted claims under theories of breach of fiduciary duty, Conspiracy to aid in the breach of fiduciary duty, fraud, conspiracy to commit fraud, intentional misrepresentation, conspiracy to interfere with inheritance, conspiracy to interfere with economic advantage, conspiracy to convert title to real and personal property, intentional interference with chattels, and intentional infliction of emotional distress.

Appendix A; continuing

No. 05-1845

The defendants filed motions for summary judgment based on lack of standing, failure to state a claim upon which relief can be granted, and other bars to recovery, pursuant to Fed. R. Civ. P.56(c). Ellman also filed a motion for summary judgment. The district court granted summary judgment for the defendants. This appeal followed.

Upon review, we concluded that the district court properly granted summary judgment for the defendants as no issue of fact is involved, and it is clear that the defendants are entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

The district court correctly concluded that Ellman lacked standing to assert the breach of duty owed to her mother. Standing requires a plaintiff to "have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical". *Lujan v. Defenders of Wildlife,* 504 U.S. 555,560 (1992) (quotations and citations omitted). In trying to establish standing, "the plaintiff generally must assert [her] own legal rights and interests, and cannot rest [her] claim to relief on the legal rights or interests of third parties." *Warth v. Seldin,* 490,499-500 (1975). Ellman cannot satisfy these requirements because she asserts claims only on behalf of herself and, as pointed out by the district court, the defendants owed a fiduciary duty to Ellman's mother, not to Ellman.

Even if Ellman had standing to bring these claims, summary judgment is still proper. As the district court correctly pointed out, the claims require Ellman to establish that her mother is mentally unsound. *See Potter v. Chamberlin,* 73N.W.2d844,846-47 (Mich. 1955) However, the undisputed evidence shows that the doctors who evaluated Irene Ellman all concur, and concluded that Irene was mentally fit.

The district court correctly concluded that Ellman lacked standing to assert claims that the defendants conspired to commit fraud and committed fraud when they "interfered with the intended passing of the estates" of Irene Ellman and Emma Spears. As with Counts I and II, Ellman fails to allege a legal relationship. Moreover, as pointed out by the district court, Ellman's fraud claims are barred by Michigan's three-year statue of limitations. See Mich.Comp. Laws #600.5805(1). The transfers at issue in this case occurred in 1982 and 1991. The instant lawsuit was filed in 2004. Therefore, the fraud claims are time-barred.

Even is Ellman had standing to bring the fraud claims, such claims fail to meet the specificity requirements of Fed.R.Civ.P.9 (b). Further, to prove a fraud claim under Michigan law, a plaintiff must allege that: (1) the defendant made a material representation; (2)the representation was false;(3) at the time the representation was made, it was ether

known to be false, or made recklessly without any knowledge of its truth; (4) the representation was made with the intention that it should be acted on by plaintiff; (5) plaintiff, in fact, acted in reliance on it; and (6) plaintiff suffered damages as a result. See *H.J. Tucker & Assocs., Inc. v. Allied Chucker & Eng'g Co.,* 595 N.W.2d 176, 187 (Mich. Ct.App. 1999) (citing *Hi-Way Motor Co. v. Int'l Harvester Co.,* 247 N.W.2d 813 (Mich. 1976)).

As the district court correctly pointed out, Ellman's complaint contains no allegations that the defendants misrepresented specific material facts. Instead, Ellman claims that the defendants interfered with her mother's estate by causing transfers of property. However, as pointed out by the district court, Irene Ellman signed the deeds herself. Thus, there was no fraudulent misrepresentation. Moreover, Ellman fails to make an allegation that she acted in reliance on the defendants' alleged fraud or intentional misrepresentations.

The district court correctly concluded that Ellman could not recover on her claim of conspiracy to interfere with inheritance. As pointed out by the district court, this tort has not been recognized by the Michigan Courts.

Appendix A; continuing

No. 05-1845

The district court correctly concluded that Ellman could not recover on her claim that the defendants conspired to interfere with an economic advantage. The tort of conspiracy to interfere with an economic advantage requires that the parties have a "business relationship." *see Bonelli v. Volkswagen of Am., Inc.*, 421 N.W. 2d 213, 219-20 (Mich. Ct. App. 1988). As

the district court correctly pointed out, no such relationship was alleged by Ellman nor can any be inferred through the evidence.

The district court correctly concluded that Ellman could not recover on her claim that the defendants conspired to convert title to real and personal property. Conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v. Phillips Camper Sales & Rental,* 593 N.W.2d 595,603(Mich.Ct.App.1999) quoting *Foremost Ins. Co v. Allstate Ins. Co.,* 486 N.W.2d600, 606 (Mich. 1992)). As pointed out by the district court, Ellman's claims, arguments, and evidence do not support a cause of action for this tort. Moreover, as stated previously, Ellman lacks an interest in the estate of Emma Spears and therefore, lacks standing to bring this claim regarding Spears' estate.

Appendix A; continuing

No. 05-1845

With respect to Irene Ellman's decision to transfer property to Claire Pryor, as noted previously, the evidence reflects that Irene Ellman was competent to handle her own affairs, and her decisions affecting the disposition of her real and personal property are not subject to a claim for conversion or conspiracy. Irene Ellman knowingly and freely transferred her property; therefore, as pointed out by the district court, the defendants could not and did not wrongfully exert domain over Irene Ellman's property. Finally, because the transfer at issue occurred over twenty years ago, Ellman's claim for conversion is time-barred. *See* Mich. Comp. Laws #600.5805.

The district court correctly concluded that Ellman could not recover on her claim that the defendants intentionally interfered with chattels. As the district court correctly pointed out, there is no such tort of "intentional interference with chattels."

The district court was also correct in concluding that Ellman failed to present a genuine issue of material fact in support of her claim for intentional infliction of emotional distress. Ellman failed to present evidence demonstrating extreme and

outrageous conduct. *See Roberts v. Auto-Owners Ins. Co.*, 374 N.W.2d 905, 908 (Mich. 1985). Nothing in the evidence submitted by the parties indicates that the defendants acted in a manner which exceeds the bounds of decency in the community.

ENTERED BY ORDER OF THE COURT

"S/ Leonard Green", Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Appendix B

United States Court of Appeals;
For the Sixth Circuit
Cincinnati, Ohio

ORDER

Date: July 28, 2006

BEFORE: RYAN and COOK, Circuit Judges,
Honorable James S. Gwin, District Judge

No. 05-1845

Marilyn I. Ellman, Plaintiff-Appellant

v.

Claire Ellman Pryor, et al., Defendants-Appellees

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were full considered upon the original

submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

July 28, 2006 "s/ Leonard Green", Clerk

Appendix C

United States Court of Appeals;
For the Sixth Circuit
Cincinnati, Ohio

MANDATE

Date: AUGUST 7, 2006

No. 05-1845

Marilyn I. Ellman, Plaintiff-Appellant

v.

Claire Ellman Pryor, et al., Defendants-Appellees

Pursuant to the court's disposition that was filed 4/25/06 the mandate for this case hereby issues today.

A True Copy

Attest: "s/ Leonard Green", Deputy Clerk

Costs: **NONE**
Filing fee.....$
Printing.....$

Total..... $

Appendix D

United States District Court
Eastern District of Michigan, Southern Division
Detroit, Michigan

ORDER

Date: June 1, 2005

BEFORE: Bernard A. Friedman,
Chief United States District Judge

No. 04-CV-72851-DT

Marilyn I. Ellman, Plaintiff

v.

Claire Ellman Pryor, et al., Defendants

OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT (Docket #37 and #40), DENYING PLAINTIFF'S FOR PARTIAL SUMMARY JUDGMENT (Docket #77), DENYING PLAINTIFF'S MOTIONS FOR EXTENSION OF TIME (Docket #24 and #38), and DENYING DEFENDANTS' MOTION TO COMPET (Docket #30)

Appendix D; continuing

No. 04-CV-72851-DT

I. Introduction

This matter is presently before the court on defendants' motions for summary judgment based on lack of standing, failure to state a claim upon which relief can be granted, and other bars to recovery, pursuant to Fed. R. Civ.P. 56©. Plaintiff also filed a motion for summary judgment stating that she is entitled to a favorable disposition of this matter. For the reasons stated below the court shall grant defendants' motions for summary judgment, deny plaintiff's motion, and dismiss plaintiff's complaint I its entirety.

Plaintiff Marilyn I. Ellman brought this action pro se and in forma pauperis, under theories of breach of fiduciary duty, conspiracy to aid in the breach of fiduciary duty, fraud, conspiracy to commit fraud, intentional misrepresentation, conspiracy to interfere with inheritance, conspiracy to interfere with economic advantage, conspiracy to convert title to real and personal property, intentional interference with chattels, and intentional infliction of emotional distress. The complaint names Claire Ellman Prior, Margaret Wilmot, The Law Offices of Booth-Patterson, Lee Need & Adkinson (a/k/a Booth, Patterson, Lee, Karlstrom & Steckling) (collectively "Booth-Patterson"), J. Timothy Patterson, Martin L. Kimmel, Michael J. Hughes, and ten John Does as defendants. Plaintiff requests a jury trial and money damages in the amount of 5 million dollars.

Appendix D; continuing

No. 04-CV-72851-DT

II. Statement of Facts

The following facts appear in the complaint and in plaintiff's copious filings. Plaintiff claims that her sister, defendant Clair Ellman Pryor, and her cousin, defendant Margaret Wilmot, conspired with defendant Booth-Patterson and its attorneys, to defraud her mother Irene (who turned 99 years old in 2004) and her mother's sister Emma Spears, of their property and of plaintiff's inheritance.

On April 16, 1980, plaintiff's father Milbert Ellman, passed away. His 1978 will stated that his wife, Irene was entitiled to the estate, and that when she died, the estate was to be divided between plaintiff and her sister. See PL's Complaint, p.5. In July 1980, plaintiff's mother had a pacemaker wire installed. Subsequently, "the Wire moved causing some brain damage, which has affected her judgment/reasoning." ID. At 5-6. Next, on August 30, 1982, defendant Pryor "without the consent or knowledge of Plaintiff, added herself to the title of [their mother's] property located at Lake Elizabeth, 5128 Durnham Road, Pontiac, Michigan... as joint owner of Irene Ellman's home." Id. Between July 1981 and September 2003, defendant Pryor engaged

in various acts which led to her "Quit Claim ownership" of the Lake Elizabeth property. Id. at 6-15.

Apparently, between 1989 and 1991, plaintiff claims that defendant Pryor, with the assistance of defendant Wilmot, and defendant Booth-Patterson, and defendant attorneys at the firm, improperly obtained durable power of attorney over her aunts, Emma Spears, Maude Spears, and Lulu Spears. Plaintiff also claims that defendants succeeded in altering the Spears' last wills and testament, such that defendant Pryor obtained control of their real property and assets. Finally, plaintiff claims that defendant pryor also persuaded their mother to prepare a new will, and a revocable trust agreement, wherein their mother became "the Trustee" and defendant Pryor became "successor Trustee." See id, at 14-17.

In 1993, when Emma Spears died, plaintiff contends that her last will and testament went through a flawed probate proceeding in Oakland County. Through that proceeding, Irene Ellman, whom plaintiff assets in incompetent, was improperly named Spears' conservator. See id.at 20 *1*.

According to the complaint, between 1981 and 2003, the Lake Elizabeth property has had at least six quit claim deeds recorded, and through defendant Pryor's use of "trickery," she has "established[ed] improper ownership over Irene Ellman's property."

Id. at 14. According to the September 9, 2003, recording, Irene Ellman and defendant Pryor are joint Tenants of the property, thereby" removing the property as an inheritable right of Plaintiff." Id.

/Plaintiff's mother, Irene Ellman was evaluated by a psychiatrist, Dr. Nicholas Budoin,
and was deemed mentally competent and "of sound mind." See Def. Br. Ex. 1-3, 14, 15.

In sum, plaintiff's complaint asserts that defendant Pryor improperly controls their mother's funds and estate, their aunts' funs and estate, and has co-mingled these assets with her won assets. Plaintiff also contends that Wilmot, Booth-Patterson, and Booth-Patterson attorneys Patterson, Hughes, and Kimmel, "participated as...co-conspirator[s]...to aid and abet defendant Claire Pryor in her efforts to steal the estates and assets of both Irene Ellman and Emma Spears by trickery, deceit, and fraud," thus, she has been improperly disinherited. Id at 16. The evidence consists of the valid recorded deeds and other legal instruments, depositions, including Irene Ellman's(video) deposition, and doctor's reports.

III. Motions for Summary Judgment

Appendix D; continuing

No. 04-CV-72851-DT

On December 22, 2004, defendant Booth Patterson, Patterson, Kimmel, and Hughes filed a motion for summary judgment. On January 3, 2005,

defendants Claire Pryor and Margaret Wilmot filed a motion for summary judgment, and on April 7, 2005, plaintiff Marilyn Ellman filed a motion for partial summary judgment. All parties argue that there are no genuine issues of material fact and that they are entitiled to judgment in their favor.

Summary judgment under Fed.R.Civ.P. 56 is proper "if the pleadings, depositions, answers in interrogatories, and admissions on file, together with the affidavits... show that there is no genuine issue [for trial] as to any material fact and that the moving party is entitled to a judgment as a matter of law. The determination is 'whether the evidence presents a sufficient disagreement to require [a trial] or whether it is so one-sided that one party must prevail as a matter of law." Upsher x. Gross Pointe Public School Sys., 285F.3d448,451-452(6thCir.2002). See also Anderson v.Liberty Lobby, Inc., 477U.S.242,252(1986). A party opposing a summary judgment motion must designate specific "evidence on which the[trier of fact] could reasonably find for the plaintiff." Anderson, 477U.S. at 252. If the non-moving party, after reasonable opportunity for discovery, is unable to meet the burden of proof, summary judgment is proper. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The court agrees with defendants' arguments that (1) plaintiff lacks standing to bring the claims in the complaint; (2) even if plaintiff has standing, the complaint fails to state a claim upon which legal relief can be granted; and (3) the statute of limitations has run on plaintiff's claims. The specific issues as to each of the ten counts of plaintiff's complaint are discussed below.

Count I Breach of Fiduciary Duty and Count II Conspiracy to Aid in the Breach of Fiduciary Duty

Plaintiff claims that defendants owed a fiduciary duty to her mother Irene Ellman's decision to create a joint tenancy between herself and defendant Pryor.

First, plaintiff lacks standing to assert the breach of a duty owed to her mother. Plaintiff must assert her own legal rights and interest and cannot rest claims for relief on the legal rights or interests of third parties. Fieger v. Commissioner of Ins., 174 Mich. App.467,471 citing, Warth v.Seldin, 422U.S.490,499 (1975). The Federal Rules of Civil Procedure state that an action must be brought in the name of the interested party. See Fed.R.Civ.P.17(a).

In this case, plaintiff asserts claims only on behalf of herself and her own interests. However, defendants owed a fiduciary duty to plaintiff's mother, not to her.

Second, the facts require plaintiff to establish that her mother is mentally unsound. Potter v. Chamberlain, 344 Mich. 399 (1955)(the party asserting mental incapacity bears the burden of proof). There is no question that plaintiff's mother is mentally sound and competent to handle her own affairs. The evidence shows that the doctors who evaluated Irene Ellman, all concurred, and concluded that she was mentally fit. Moreover, Irene Ellman's video taped deposition also leads to a conclusion of mental fitness. Therefore, the court finds that claims of breach of fiduciary duty and "conspiracy to aid in the breach of fiduciary duty" must be dismissed.

Count III Fraud, Count IV Conspiracy to Commit Fraud, and Count V Intentional Misrepresentation

Plaintiff claims that defendants conspired to commit fraud and committed fraud when they "interfered with the intended passing of the estate, by transferring the estate during the lifetime of Irene Ellman to her own name[Claire Pryor] or to her separate Trust by using a power of attorney...." As to Emma Spears, plaintiff asserts that defendant

'induced Emma Spears to assign her estate by way of Quit Claim deed to Claire Pryor under the guise that it was the only way to prote [c}t the estate for the heirs."

First, like Counts I and II, plaintiff lacks standing to bring these claims because she fails to allege a legal relationship as required by Fed.R.Civ.P.17(a). Second, plaintiff's fraud claims are barred by the three year statute of limitations.

SeeM.C.L.600.5805(10). The transfers at issue accrued in 1982 and 1991, therefore these claims are time barred, and must be dismissed.

Third, even if plaintiff had standing to bring these claims, she fails to allege facts sufficient to establish the elements of fraud with sufficient specificity. The Federal Rules of Civil Procedure require that "[i]lall averments of fraud or mistake, the circumstances constituting fraud... shall be stated with particularity...:Fed.R.civ.P.9(b). To establish a prim a facie claim of fraud, plaintiff must plead, with particularity:

> (1)that the defendant made a material representation, (2) that the representation was false, (3) that when the defendant made the representation, it was known to be false, or was made recklessly, without any knowledge of its truth and was made as a positive assertion, (4) that the defendant made the representation with the intention that it should be acted on by the plaintiff.

> (5) that the plaintiff acted in reliance on it, and (6) that the plaintiff suffered damages as a result

PDV Midwest Refining LLC v. Armada Oil & Gas Co., Inc., 116FSupp.2d835,845 (E.D.Mich. 1999), citing H.J.Tucker & Assoc.Inc v. Wllied Trucker & Engineering Co., 234 Mich. App.550(19999)

Plaintiff's complaint does not contain allegations that defendants misrepresented specific material facts, rather she claims that defendants interfered with her mother's estate by causing transfers of property. However, Irene Ellman herself, and not a person assigned power of attorney, signed the deeds. Therefore, there was no fraudulent misrepresentation. Moreover, plaintiff cannot fulfill element five because there is no allegation that plaintiff acted in reliance on defendants' alleged fraud or intentional misrepresentations. For all of these reasons, plaintiff fails to state a cause of action for fraud, conspiracy to commit fraud, and intentional misrepresentation.

Count VI Conspiracy to Interfere with Inheritance

Next, plaintiff's complaint alleges "Conspiracy to Interfere with Inheritance." The elements of this tort are:

> (1) the existence of expectancy; (2) intentional interference with that expectancy; (3) the interference involved conduct tortuous in itself such as fraud, duress or undue influence; (4) a reasonable certainty that the devise to the plaintiff would have been received had the defendants not interfered; and (5) damages.

Doughty v. Morris, 871 P.2d380,384 (N.M.App. 1994).*2* This tort has not been codified by the

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2 Although many states have recognized this cause of action, defendants assert that Michigan rejected it, yet, unpublished decisions indicate that it was given "tacit recognition" in Estate of Doyle v. Doyle, 177 Mich. App. 546,549 (1989).

Michigan legislature has it been explicitly approved by the Michigan Courts. In this matter, it is irrelevant whether or not it is an accepted cause of action in Michigan, because plaintiff cannot establish that she had an expectancy in Emma spears' estate. Irene Ellman is still living and has been presumed competent to manage her own affairs. Therefore, there is no question that plaintiff cannot recover on this count of her complaint.

Count VII Conspiracy to Interfere with Economic Advantage

As to this count, defendants properly point out that plaintiff "cuts and pastes her prior claims, word for word and applies a new [name] to another claim

for damages." Def.Br.at 12. The tort of conspiracy to interfere with economic advantage requires that the parties have a" business relationship.! See Bonelli v. Volkswagen of America, Inc., 166 Mich. App. 483,496 (1988). No such relationship was alleged by plaintiff nor can any be inferred by the evidence. Therefore, for all the reasons set forth above and the fact that the parties do not have a business relationship, defendants' motions are granted as to this claim as well.

Count VIII Conspiracy to Convert Title to Real and Personal Property

Plaintiff alleges the tort of conversion based on defendants' use of "fraud, trickery and deceit" to make inter vivos transfers of property from Irene Ellman and Emma Spears to defendant Pryor. PL's Complt. At 14. The tort of conversion is "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." Head v. Phillips Camper Sales & Rental, Inc., 234 Mich. App.94,111 (1999).

Plaintiff's claims, arguments, and evidence do not support a cause of action for this tort. Again, as discussed above, there is no question that plaintiff

lacks an interest in the estate of Emma Spears, therefore plaintiff lacks standing to bring this claim regarding her estate.

As to Irene Ellman's decision to transfer property to Claire Pryor, as noted above, the evidence shows that Irene Ellman is competent to handle her own affairs, and therefore Irene Ellman's decisions pertaining to the disposition of her real and personal property are not subject to a claim for conversion nor a conspiracy. Because Irene Ellman knowingly and freely transferred her property, the defendants could not and did not wrongfully exert domain over Irene Ellman's property. Finally, the real property transfers at issue occurred over twenty years ago. Therefore, the three year statute of limitations for this tort has long since expired. See M.C.L. 600.5805.

Count IX Intentional Interference with Chattels

Once again, plaintiff cuts and pastes the same allegations discussed above and sets forth another count in her complaint. For all of the reasons set forth above defendants' motions for summary judgment are granted. Moreover, the court notes that defendants correctly point out that there is no such tort of "intentional interference with chattels," thus, plaintiff fails to state a claim upon which relief can be granted.

Appendix D; continuing

No. 04-CV-72851-DT

Count X Intentional Infliction of Emotional Distress

Plaintiff claims that defendants' actions have inflicted emotional distress upon her. The prima facie case of intentional infliction of emotion distress requires that plaintiff establish: (1)"extreme and outrageous" conduct; (2) intent or recklessness; (3) causation; and (4) 'severe emotional distress." See Restatement Torts, 2d 46,p71. Courts require that "extreme and outrageous conduct" be characterized by conduct that:

> Go[es] beyond all possible bounds of decency, and to be regard as atrocious, and utterly intolerable in a civilized community... Generally, the case is one...in which...an average member of the community would... exclaim 'Outrageous.'

Roberts v. Auto Owners Ins. Co., 422 Mich.594 (1995)(citation omitted). Considering the facts in the light most favorable to plaintiff, indicates that she fails to make even a minimum showing of proof of the "extreme and outrageous" conduct, required to withstand defendants' motions for summary judgment. Nothing alleged in the complaint or in any of the evidence before the court indicates that defendants acted in a manner which exceeds the bounds of decency in the community. Considering

the facts in the light most favorable to plaintiff does not raise a question as to whether defendants' conduct surrounding the estate, the properties in question, and plaintiff's alleged inheritance, could qualify to establish the prima facie case for intentional infliction of emotional distress.

IV. Conclusions

In this case, there is no genuine issue of material fact that plaintiff's complaint fails to state claims upon which relief can be granted. Plaintiff lacks standing to assert claims against her Aunt Emma Spears' estate because she never has a legal interest in that estate. Plaintiff also lacks standing to assert claims against her mother Irene Ellman's estate because her mother is still alive. Moreover the evidence viewed in the light most favorable to plaintiff does not establish a prima facie case for any of the torts alleged by plaintiff, nor does it present any other arguable basis in law showing that unjustified or illegal actions were taken against plaintiff, by any of the named defendants. For all of these reasons, the court grants defendants' motions for summary judgment, dismissing plaintiff's complaint in its entirety. All of the issues raised in plaintiff's motion for partial summary judgment are rendered moot by this decision.

Appendix D; continuing

No. 04-CV-72851-DT

On November 11, 2004 and on December 29, 2004, plaintiff filed motions for extension of time, and on December 9, 2004, defendants filed a motion to compel. The court is granting defendants' motions for summary judgment and dismissing the complaint in its entirety, therefore these motions are denied as moot. Accordingly,

IT IS ORDERED that defendants' motions for summary judgment are granted.

IT IS FURTHER ORDERED that plaintiff's motion or Partial summary judgment is denied.

IT IS FURTHER ORDERED that plaintiff's Motions for extension of time are denied.

IT IS FURTHER ORDERED that defendants' motion to compel are denied.

"s/Bernard A. Friedman"
CHIEF UNITED STATES DISTRICT JUDGE

Dated: June 01,2005
Detroit, Michigan

Appendix E

United States District Court
Eastern District of Michigan, Southern Division
Detroit, Michigan

ORDER

Date: May 31, 2005

BEFORE: Bernard A. Friedman,
Chief United States District Judge

No. 04-CV-72851-DT

Marilyn I. Ellman, Plaintiff

v.

Claire Ellman Pryor, et al., Defendants.

ORDER AFFIRMING MAGISTRATE JUDGE VIRGINIA MORGAN'S ORDER DATED MAY 11, 2005, DENYHING PLAINTIFF'S MOTION FOR SANCTIONS, FOR REFERRAL TO THE DEPARTMENT OF JUSTICE, AND FOR AN ORDER COMPELLING IRENE ELLMAN TO SUBMIT TO A PSYCHOLOGICAL EXAMINATION

This matter is before the Court on plaintiff's notice of appeal of the Magistrate Judge's ruling of May 11, 2005, denying plaintiff's motion for sanctions, for referral to the Department of Justice,

and for an order compelling Irene Ellman to submit to a psychological examination.

This Court has had an opportunity to review this file, including prior orders of Magistrate Judge Morgan, as well as motions'/attachments and response, and finds that the Magistrate Judge correctly ruled and that her ruling is neither contrary to law nor clearly erroneous.

ACCORDINGLY:

IT IS HEREBY ORDERED that Magistrate Judge Virginia Morgan's order dated May 11, 2005, is affirmed.

May 31, 2005
Detroit, Michigan

"s/ Bernard A. Friedman"
BERNARD A. FRIEDMAN,
CHIEF JUDGE

Appendix F

United States District Court
Eastern District of Michigan, Southern Division
Detroit, Michigan

Date: August 3, 2005

BEFORE: Bernard A. Friedman,
Chief United States District Judge

No. 04-CV-72851-DT

Marilyn I. Ellman, Plaintiff

v.

Claire Ellman Pryor, et al., Defendants

OPINION AND ORDER REJECTING DEFENDANTS' MOTIONS FOR ATTORNEY FEES, COSTS, AND SANCTIONS [AND REFAIN ORDER AGAINST PLAINTIFF FILING FURTHER LAWSUITS]

This matter is presently before the court on defendants' motions for attorney fees, costs and sanctions. Plaintiff has responded to these motions, which the court shall decide without oral argument.

Fed R. Civ. P. 11©(2) describes the type of sanctions a court may impose for filing a frivolous pleading:

> A sanction imposed for violation of this rule
> Shall be limited to what is sufficient to deter

> Repletion of such conduct by others similarly Situated. Subject to the limitations in sub[Paragraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, or order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

In this matter, plaintiff's claims and litigious history border on an abuse of the judicial system and a waste of court resources. Plaintiff filed a 68-page complaint asserting nearly a dozen claims against her sister, her cousin and the attorneys and law firm who drafted documents for her mother, sister, and aunt. Furthermore, in less than a year, plaintiff has filed over 20 motions, many of which were at least arguably frivolous.

Despite the substantial resources expended in this matter and defendants' request for $33,248.82 in attorney fees and costs, the court shall not impose costs and fees at this time.

Instead, the court will require plaintiff to submit any future cause of action against defendants to it for pre-filing review. Plaintiff may file a future case against defendant only if the court allows the lawsuit and only after reviewing any future complaint against Defendants. Furthermore, plaintiff may not file any more motions in the instant case.

Appendix F; continuing

No. 04-CV-72851-DT

If plaintiff violates this order, than Rule 11 sanctions will be imposed to the greatest degree.

IT IS ORDERED that defendants' motions for sanctions are denied.

IT IS FURTHER ORDERED that plaintiff refrain from filing any further lawsuits in this jurisdiction, against defendant, without obtaining prior written permission from one of the judges of this court.

IT IS FURTHER ORDERED that plaintiff refrain from filing an further motions in this matter.

"s/ Bernard A. Friedman"
CHIEF UNITED STATES DISTRICT JUDGE

Dated: August 3, 2005
Detroit, Michigan

Appendix G

United States District Court
Eastern District of Michigan, Southern Division
Detroit, Michigan

BEFORE: Virginia M. Morgan
Chief United States Magistrate Judge

March 07, 2005

No. 04-CV-72851-DT

Marilyn I. Ellman, Plaintiff

v.

Claire Ellman Pryor, et al., Defendants

DISCOVERY ORDER

This matter came on for hearing on the following three motions: Defendants Clair Pryor and Margaret Wilmont's Motion for Order Compelling Discover filed December 9, 2004; Plaintiff's Motion to Compel Discovery filed January 3, 2005; and Plaintiff's Motion for Sanctions Under Rule 11 for Filing a Bad Faith Frivolous Motion filed January 7, 2005. Oral argument was held before the magistrate judge on March 2, 2005. For the reasons stated on the record, IT IS ORDERED that the Motions are disposed of as follows:

Appendix G; continuing

No. 04-CV-72851-DT

Defendant's Motion to Compel IS GRANTED in part. With plaintiff's permission, the court deems plaintiff's statements in the joint list of unresolved issues to be supplemental responses to the interrogatories. Defendant is satisfied with that resolution.

Plaintiff's Motion to Compel IS GRANTED in part. Defendant law firm's blanket claims of attorney-client privilege for all documents is rejected. The law firm will provide all public documents, conservatorship records, and other non-privileged documents in their files 14 days after Judge Friedman's decision in the event he denies their motion for summary judgment.

In the interim, all defendants will provide copies of the Will and Durable Power of Attorney for Emma and Maude, the 1993 Revocable Living Trust for Irene, the 2001 Trust, the 2004 Amendment and any Durable Powers of Attorney given by Irene, regardless of who prepared them, in their files. These are to be provided by March 9, 2005.

Plaintiff's Motion For Sanctions IS DENIED. No costs to either side.

"s/ Virginia M. Morgan"
United States Magistrate Judge

Dated: March 07, 2005